RESEARCH HIGHLIGHT

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Socio-economic Series 06-004

ISSUES, IMPEDIMENTS AND OPPORTUNITIES TO USING DESIGNATED LAND ON-RESERVE FOR AFFORDABLE HOUSING

INTRODUCTION

Section 89(1) of the *Indian Act* provides that reserve lands and assets owned by an Indian located on-reserve cannot be mortgaged, pledged, attached, levied, charged or seized by a non-Indian. This section of the Act has restricted the use of on-reserve land and limited the ways in which an individual or Band Council can access funds for housing because the asset is unavailable to the lender as security for the loan provided. These restrictions have created a housing environment unlike any other in Canada. In order to provide affordable homes, it is essential to overcome the barriers that reserve land creates for housing.

A "designation by way of surrender," known as a "designation," is a process by which a First Nation designates all or a part of its land to the Crown. This allows the Crown to grant interests in reserve lands on behalf of the First Nation, while maintaining the reserve status of the land and the First Nation. The designation process under the *Indian Act* is available to First Nations, but the process is long and the related information is complicated.

Research Purpose

This research project, entitled *Issues, Impediments and Opportunities to using Designated Land On-Reserve for Affordable Housing*, investigates the utilization of designated land to facilitate affordable housing on reserve, and considers other *Indian Act* land tenure options and the *First Nations Land Management Act* (FNLMA), given that the process of designating land is only available under the *Indian Act*.

The research project identifies the differences between the designation process under the *Indian Act* and the process under the *First Nations Land Management Act* (FNLMA), and compares the advantages and disadvantages of the land methods of both systems. Based on a roundtable that took place with selected First Nations, it documents experiences and examines how some First Nation communities consider programs, lending and land choices, given their particular situation.

METHODOLOGY

The methodology involved numerous steps and focused on a comparative report dealing with land designation under the *Indian Act* and the process under the FNLMA, and the roundtable set-up, to capture information on participants' experiences under these two processes.

Comparative Report on Land Designation: The comparative report reviewed land tenure options for housing under the *Indian Act* and those under the FNLMA. It was supported by the literature review, interviews with selected First Nations staff, First Nations Land Management Advisory Board staff, Aboriginal banking officials, CMHC staff and INAC (Indian and Northern Affairs Canada) staff. The consultant also drew on its extensive professional experiences and on a corporate collection of relevant documents. The comparison was also considered and refined by the roundtable participants.

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Roundtable Process

Those invited to the roundtable were

- a primary group of First Nations having direct experience with both the *Indian Act* and FNLMA;
- a second smaller group of First Nations without direct experience in FNLMA; and
- individuals with expertise in the area of land tenures and housing.

The selection of the primary group of First Nation participants was established based on their experience, geographic location, population, and commercial and homeownership contexts.

The roundtable took place over two days and employed various techniques to make the process as participative as possible and to elicit information and feedback. Information gathered was integrated into a roundtable report.

FINDINGS

Literature Review

The literature review helped to develop a critical understanding of the use of designated land on-reserve for housing. The findings of the literature review confirm that the land designation process is unique to the *Indian Act* and the Canadian context, and that there is very little research on the issue of land designation on-reserve in either the Canadian or international context.

While government manuals thoroughly outline the land-related process, little attention is paid to the rationale for or the results of, land designations being used for housing purposes or the array of matters related to financing, marketing, taxation and service agreements that can accompany a designated land residential development. Issues and impediments identified point to a cumbersome, time-consuming and often misunderstood process related to land designations.

The lack of academic and technical research on this particular subject did not allow the literature review to contribute to a substantive critique of the designation process in terms of its ability to improve housing on-reserve.

Comparative Report on Land Designation

While there is a land designation process under the *Indian Act*, there exist no similar process under the FNLMA initiative, therefore a direct comparison of the specific procedures under the two processes was impossible. The comparative report was refocused to compare the advantages and disadvantages of the two systems while considering the barriers and opportunities to the First Nation under each.

Several common themes became evident throughout the information collection phase. These included the lack of clear, understandable, appropriate, transferable and available information with regard to both processes (what is possible and the risks/benefits); and the lack of sharing or communication of information/best practices that have been successful under either of the processes.

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Roundtable Process

First Nation participants identified underlying issues that affect the nature and scope of the land, as well as lending and housing choices. They indicated that communities try to consider how programs, lending and land choices fit together, and attempt to find out what the specific benefits of each combination will be in a particular situation. However, they did not find any comprehensive consolidated information on the options available under either the *Indian Act* or FNLMA.

A number of themes emerged as a result of this process and included participants' perceptions of the advantages/disadvantages and issues/impediments in land tenure options across the two processes, such as:

- land (surrender of rights) and treaty rights;
- the ability of FN members to get a MLG on designated land and willingness to pay lease costs on "their" land;
- the increase in FN responsibilities—regulatory issues such as bylaws, environmental issues, training, knowledge and the availability of resources;
- First Nation political views impact choices for housing projects.

Issues specific to the *Indian Act* process included: the bureaucratic government process being long and cumbersome, and INAC's fiscal intervention policy; and under the FNLMA process: limited quality information on the process (including leasehold options) and how it works, and government policies not reflecting new land code tenures.

The participants saw no single method as clearly preferable for housing purposes and noted that the political will may not be there, regardless of the quality of information and benefits. They did see a need for a consolidation of information on all the options of land tenure and housing, a need for government program review/alignment; and a program/procedure review as it applies to FNLMA code tenures.

CONCLUSIONS AND SUMMARY

The land designation process is unique to the *Indian Act*. It has no equivalent under any other process, be it Canadian or international, and comparing it to other land options for housing is difficult. There are many scenarios of land, housing and lending combinations that could be considered by First Nation communities. There is no doubt that designated land may be a viable option for some communities or, that in some markets, it can produce viable and attractive rental and "ownership" options.

However, First Nations have identified some concerns regarding the range and quality of information available to them, which affects their ability to fully consider the full range of housing/land options. Identifying and addressing those issues is seen as the priority to making the full range of land and housing project choices more available to a greater number of First Nations.

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Housing Research at CMHC

Under Part IX of the *National Housing Act*, the Government of Canada provides funds to CMHC to conduct research into the social, economic and technical aspects of housing and related fields, and to undertake the publishing and distribution of the results of this research.

This fact sheet is one of a series intended to inform you of the nature and scope of CMHC's research.

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